Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO *and* Northern Telecom, Inc. and Local 1109, Communications Workers of America, AFL-CIO. Case 2-CD-661

July 29, 1982

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Northern Telecom, Inc., herein called Northern Telecom or the Employer, alleging that Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, herein called Local 3, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Local 1109, Communications Workers of America, AFL-CIO, herein called Local 1109.

Pursuant to notice, a hearing was held before Hearing Officer Joel C. Schochet on February 18 and 25 and March 29, 1981. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, all parties filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a Delaware corporation with its principal place of business in Nashville, Tennessee, and an office and place of business in New York, New York, is engaged in the manufacture, sale, installation, and service of telephone equipment. During the 12 months preceding the hearing, the Employer, in the course of its operations, derived income in excess of $50,000 from clients outside the State of Tennessee and received materials valued in excess of $50,000 from outside the State of New York. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Local 3 and Local 1109 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

On August 14, 1981,[1] Northern Telecom contracted with Johnson & Higgins, an insurance and actuarial firm, to install a telephone system at Johnson & Higgins' offices located at 95 Wall Street, New York, New York. In October, Northern Telecom's employees, who are represented by Local 1109, began performing the installation work, which involved pulling station cable for each telephone line to a location on each floor, joining the floors with riser cable, running the riser cable to the switchroom and connecting the riser cable to a "private branch exchange," and then testing the lines and "cutting over" to the New York Telephone Company's central office lines.

Under its agreement with Northern Telecom, Johnson & Higgins was responsible for the access work, which involved the preparation of the switchroom and the installation of conduit that would give access to the riser cables between the floors. Johnson & Higgins awarded this work to Kleinknecht Electrical Contracting, Inc., whose bid was based on specifications provided by Northern Telecom. Kleinknecht's employees, who are represented by Local 3, began the access work on or about November 23.[2]

Both phases of the job proceeded without incident until Friday, December 11. On that afternoon, William Standley, Johnson & Higgins' manager of office services, heard that Kleinknecht's employees had stopped working. Standley confirmed the existence of a work stoppage on Monday, December 14, when he spoke with Kleinknecht's foreman, Stuart Brown, who was a member of Local 3. According to Standley, Brown stated that there was a labor jurisdiction problem between the two Unions and that the work being done by members of Local 1109 was supposed to be done by members of Local 3. Standley then called Peter Kleinknecht, a Kleinknecht official, who indicated that all the work should be done by members of Local 3.

[1] All dates hereafter are in 1981 unless indicated.

[2] Kleinknecht's employees were already in the building, working on other jobs.

The following morning, December 15, Standley brought Brown and Alf Flornes, Kleinknecht's estimator, to the regular weekly meeting held by Darwin Ley, Johnson & Higgins' manager of financial administration, and attended by various representatives of Johnson & Higgins and Northern Telecom. According to Brian Reilly, Northern Telecom's project supervisor at 95 Wall Street, Brown stated that there was a problem because Local 3 had jurisdiction for pulling cable and that "they wanted to pull the cable." Brown also mentioned that Local 3 had pulled the cable for Citicorp, which was a Northern Telecom installation. Ley testified that he asked Brown if Local 3 felt its members should be doing all the work, and that Brown nodded his head yes in reply. Later that day, during a conference call between Ley, Standley, and Peter Kleinknecht, Kleinknecht said that only one union should be involved and offered to perform the installation work at no additional cost to Johnson & Higgins.

On or about December 22, at a time when the work stoppage was still in progress, officials from Northern Telecom, Johnson & Higgins, and Kleinknecht met, this time accompanied by their attorneys. Ley testified that Kleinknecht's attorney said that Kleinknecht had to "pull off the job" because of its contract with Local 3, which required that Local 3 members do all of the work.

Local 3's business representative, Bernard Rosenberg, testified that he did not find out until the Sunday after Christmas (December 27) that Brown had refused to do the access work. Rosenberg further testified that he informed Kleinknecht's employees to continue working the next day. Kleinknecht's employees returned to the job on December 28 or 29, and they completed the access work on or about January 20, 1982.

Michael Zafarano, Northern Telecom's branch operations manager for the New York metropolitan area, testified about two occasions in 1980 and 1981 when Northern Telecom had difficulty obtaining a Local 3 contractor to perform only part of an installation job. In each instance, the contractors contacted by Northern Telecom told Zafarano that they would not do just a portion of the work but had to perform the entire job, explaining that this was a rule laid down by Local 3.

B. *The Work in Dispute*

The work in dispute involves the installing, testing, and servicing of equipment relating to the installation of an electronic telephone system for Johnson & Higgins at its 95 Wall Street, New York, New York, location.

C. *Contentions of the Parties*

Local 3 contends that the notice of hearing should be quashed. It argues that it made no claim for the work in dispute and that it is not responsible for the actions or statements of Brown. In this regard, Local 3 contends that it was Kleinknecht who took Brown off the access work, and further asserts that it did not even know of the work stoppage until it was notified of it by Region 2 after the charge in the instant case was filed. Local 3 further contends that the matter is moot since Kleinknecht's employees resumed work before the notice of hearing was issued and since the access work was completed prior to the hearing. It also contends that the record does not support a broad award. Local 3 presented no evidence at the hearing with respect to the merits of the dispute and does not address the merits of the dispute in its brief.

The Employer contends that the instant dispute is yet another incident in the long and continuing dispute between Local 3 and Local 1109 regarding the installation of telephone systems in the New York metropolitan area, and it adverts to Local 3's history of attempting to secure such work by unlawful implementation of its "total job" rule. The Employer further contends that Local 3 is responsible for Brown's actions since he was acting pursuant to Local 3's "total job" rule. The Employer also contends that the work in dispute should be awarded to the Employer's employees who are represented by Local 1109 based on the following: the collective-bargaining agreement between the Employer and Local 1109 specifically refers to the work in dispute; it is more economical and efficient for the Employer to use its own employees who are specially trained in the use of Northern Telecom equipment; and it is Northern Telecom's practice and preference to use its own employees. Local 1109 has taken a position basically consistent with that of the Employer.

The Employer further contends that, in view of the long history of jurisdictional disputes between the two Unions over the installation of telephone systems in the New York metropolitan area, the instant case is not moot, and it urges the Board to issue a broad award assigning the work in dispute to employees represented by Local 1109 in any area served by Northern Telecom where the geographical jurisdictions of Local 3 and Local 1109 coincide.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the

Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

In *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (L. M. Ericsson Telecommunications, Inc., New York Division)*, 257 NLRB 1158 (1981), the Board found that Local 3 has a "total job policy" under which Local 3 contractors are supposed to bid only on jobs for which they can get the total work of installing and servicing telephone interconnect systems. This total job policy is also embodied in article III, section 12, of Local 3's bylaws, which provides:

> No member is to give away work coming under the jurisdiction of this Local, or to allow any other tradesmen to do work coming under this Local's jurisdiction.

This bylaw has been found to constitute inducement or encouragement of a walkout or other refusal to perform services in violation of Section 8(b)(4)(B),[3] and Local 3 has been held responsible for the conduct of its members acting pursuant thereto.[4]

As indicated above, on December 14, Kleinknecht's foreman, Brown, who was a member of Local 3, told Standley of Johnson & Higgins that the work being done by members of Local 1109 was supposed to be done by members of Local 3. At a meeting the next day, Brown told officials of Johnson & Higgins and Northern Telecom that Local 3 had jurisdiction over pulling cable and wanted to pull it, and he nodded his head affirmatively when asked if Local 3 believed its members should be doing the entire job. Moreover, it does not appear that Local 3 took any action to discipline Brown, or any other Local 3 member who ceased work, as required by the Union's constitution and bylaws where unauthorized work stoppages occur. Considering these facts in the context of Local 3's maintenance of the above-described bylaw and total job rule, we find that Brown ceased performing his own work and demanded the disputed work in accordance with that bylaw and rule. Accordingly, we find that Brown was acting in Local 3's behalf to protect its jurisdiction and that Local 3 is responsible for Brown's actions.[5]

We further find no merit in Local 3's contention that the instant dispute is moot. In this regard, we note the long history of jurisdictional disputes over similar work involving the same Locals and different employers. We also note Zafarano's testimony about two recent instances in 1980 and 1981 in which Northern Telecom experienced difficulties—as a result of Local 3's total job policy—in obtaining a Local 3 contractor to perform only a portion of an installation job. In these circumstances, we find that there is a real likelihood that similar disputes will occur in the future.[6] Thus, although the particular work which gave rise to this proceeding has been completed, the underlying jurisdictional dispute has not been resolved. Accordingly, we find that the dispute is not moot.

On the basis of the entire record, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. Additionally, no party contends and there is no evidence demonstrating that an agreed-upon method for the voluntary adjustment of the instant dispute exists. We therefore find that this dispute is properly before the Board for a determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various relevant factors.[7] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[8]

1. Collective-bargaining agreements

Neither of the Unions involved herein has been certified by the Board as the collective-bargaining representative for a unit of the Employer's employees. The Employer does not have a collective-bargaining agreement with Local 3. The Employer and Local 1109 have a current collective-bargaining agreement which specifically refers to the work in dispute. Accordingly, we find that the factor of collective-bargaining agreements favors an award of the work in dispute to the Employer's employees represented by Local 1109.

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[3] See *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Eastern States Electrical Contractors, Inc.)*, 205 NLRB 270 (1973); *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company)*, 140 NLRB 729, 740 (1963).

[4] See *Local 3, IBEW (L. M. Ericsson)*, *supra*, at 1371; *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Western Electric Company, Inc.)*, 141 NLRB 888, 893 (1963). Accord: *Local 1016, United Brotherhood of Carpenters & Joiners of America, AFL-CIO (Booher Lumber Co., Inc.)*, 117 NLRB 1739 (1957).

[5] *Local 3, IBEW (Western Electric)*, *supra* at 893.

[6] See *Local 581, International Brotherhood of Electrical Workers, AFL-CIO (National Telephone and Signal Corporation)*, 223 NLRB 538 (1976).

[7] *N.L.R.B.* v. *Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[8] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

2. Employer past practice and preference

The record indicates that the Employer's regular practice is to assign the disputed work to its own employees who are represented by Local 1109. While the record indicates that the Employer occasionally has used electrical contractors employing members of Local 3 to perform some of the installation work on Northern Telecom jobs, the Employer contends that this has occurred only when a customer has insisted upon using a Local 3 contractor in order to avoid difficulties with Local 3. We find, therefore, that the Employer's predominant past practice favors an award to its employes represented by Local 1109.

At the hearing and in its brief, the Employer stated its preference to use its own employees, who are familiar with Northern Telecom equipment, and who have been specially trained for the job. While we do not afford controlling weight to this factor, we find that it tends to favor an award of the work in dispute to the Employer's employees represented by Local 1109.

3. Relative skills and training

The record indicates that the Employer trains its employees in the use of its own equipment. The record further indicates that the Employer's employees are capable of performing all aspects of telephone installation work and they have performed such work to the Employer's satisfaction. Although there is no direct evidence regarding the skills or training of members of Local 3, we note that the Employer occasionally has used contractors employing such individuals and there is no contention that they do not possess the requisite skills. However, there is no evidence that members of Local 3 generally have received training in the use of equipment similar to that utilized by the Employer. We therefore find that this factor tends to favor an award of the disputed work to the Employer's employees represented by Local 1109.

4. Economy and efficiency of operations

The Employer presented testimony that it is more economical to assign the work in dispute to its own employees who are represented by Local 1109 than to members of Local 3. In this regard, Zafarano's testimony indicates that, in the past when Northern Telecom has utilized members of Local 3, it has done so through a contractor, thereby incurring additional costs. Further, as noted above, Northern Telecom's employees have been trained in and are familiar with Northern Telecom equipment. We find, therefore, that this factor favors an award of the work in dispute to the Employer's employees represented by Local 1109.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that the employees of the Employer represented by Local 1109, are entitled to perform the work in dispute. We reach this conclusion relying on the facts that the Employer's collective-bargaining agreement with Local 1109 specifically refers to the work in dispute; the Employer's assignment is consistent with its predominant past practice and its preference; the Employer's employees represented by Local 1109 possess the requisite skills to perform the work in dispute satisfactorily; and such an award will result in greater economy and efficiency of operations. In making this determination, we are awarding the work in dispute to employees who are represented by Local 1109, but not to that Union or its members.

Scope of the Determination

As noted above, the Employer urges the Board to issue a broad award encompassing any area served by Northern Telecom where the geographical jurisdictions of Local 3 and Local 1109 coincide. The Employer relies on the long history of jurisdictional disputes involving the same two Unions and concerning similar telephone interconnect work.

In *International Brotherhood of Electrical Workers, AFL-CIO, Local 4 (Standard Sign & Signal Co., Inc.)*, 248 NLRB 1144 (1980), the Board set forth two prerequisites for a broad areawide award: (1) there must be evidence that the work in dispute has been a continuous source of controversy in the relevant geographical area and that similar disputes may recur; and (2) there must be evidence demonstrating a proclivity to engage in further unlawful conduct in order to obtain work similar to that in dispute. These prerequisites for a broad order are clearly met here since there is evidence that the work in dispute has been a continuous source of controversy between the two Unions in the New York metropolitan area and that other similar disputes are likely to occur in the future. Thus, we note that Local 3 has been found to have a proclivity for engaging in unlawful secondary boycott activity in connection with claims to disputed work involving telephone installations in the New York metropolitan area, and that it has continued to maintain a total job policy and bylaw which has been found to be an inducement of unlawful conduct.[9] Further, as noted above, the Employer on

[9] See, e.g., *Local 3, IBEW (L. M. Ericsson), supra*, at 1373; *Local 3, IBEW (Eastern States), supra* at 270.

prior occasions has experienced difficulties engendered by Local 3's total job policy. Under all of the circumstances, we find that to properly resolve the instant dispute our award must cover all work similar to that in dispute done by the Employer wherever the geographical jurisdictions of Local 3 and Local 1109 coincide.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Northern Telecom, Inc., who are currently represented by Local 1109, Communications Workers of America, AFL-CIO, are entitled to perform the work of installing, testing, and servicing of equipment relating to the installation of Northern Telecom's electronic telephone systems, wherever the geographical jurisdictions of Local 3, International Brotherhood of Electrical Workers, AFL-CIO, and Local 1109, Communications Workers of America, AFL-CIO, coincide.

2. Local 3, International Brotherhood of Electrical Workers, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Northern Telecom, Inc., to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 3, International Brotherhood of Electrical Workers, AFL-CIO, shall notify the Regional Director for Region 2, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.